

COPY

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UINTAH COUNTY

EBENEZER G. DEFRIEZ, et al, :
 :
 Plaintiffs, :
 :
 vs. :
 :
 ASHLEY CENTRAL IRRIGATION CO., : ORDER APPOINTING
 et al., and : WATER COMMISSIONER
 : for 1983 - 1984
 :
 ASHLEY VALLEY RESERVOIR COMPANY,
 UNITED STATES BUREAU OF RECLA- :
 MATION, HIGHLINE CANAL CO.,
 DRY FORK IRRIGATION CO., GERALD :
 CLARK, MOSBY IRRIGATION CO.,
 PITT DITCH CO., STEINAKER DITCH :
 CO., HARDY DITCH CO., JOSEPH
 DODDS, LESTER HULLINGER, DUAYNE : Civil No. 18
 T. JOHNSON, MORGAN MERKLEY, : now
 GEORGE D. MERLEY, REX GARDNER : Civil No. 3197
 EST., HENRY T. PELTIER, JR.,
 SADIE McDONKIE EST., ISLAND :
 DITCH CO., and :
 :
 ARSENITH CHADWICK, et. al., :
 :
 Intervenor and Defendants.

The Petition of Ralph Walker, Chairman of the Ashley Creek Water Users Executive Committee, representing all of the users of the waters of Ashley Creek and its tributaries, came before the Court for hearing and 17th day of May, 1983, for the appointment of a Water Commissioner for the year beginning April 7, 1983 and ending April 6, 1984, and for directions from this Court concerning the

distribution of the waters of the Ashley Creek for the entire term.

The report of the Commissioners for the year 1983-1984 having been duly filed herein and it appearing to be a complete and accurate report is hereby approved by the Court.

The Court having considered the recommendation of the Executive Committee of the Ashley Creek Water Users that David Rasmussen be appointed as Water Commissioner for the year beginning April 7, 1983 and ending April 6, 1984, and no other recommendations having been made and it appearing to the Court that David Rasmussen, by reason of the years of his past experience, should be appointed as Water Commissioner for Ashley Creek:

1. That all the users of the water of Ashley Creek and its tributaries heretofore made parties to this action have been given due notice through their chosen representatives for the time by the laws of the State of Utah.

2. That this Court has jurisdiction of the distribution of the waters of Ashley Creek and its tributaries, by reason of the Decree entered herein on November 17, 1897, dividing the waters of Ashley Creek and setting forth the respective rights of the parties to said action in and to the waters of Ashley Creek and its tributaries, which Decree has been amended to include water rights claimed by other persons since the date of said Decree.

3. That since the date of said Decree, as amended, the rights of the respective parties to the said suit have been administered under the direction of this Court, through the Water Commissioner,

appointed annually by this Court as provided in the said Decree; that the said Decree provides that a Water Commissioner be appointed annually by this District Court each year at the request of one or more of the parties to said action; that the said Commissioner should be authorized, empowered and directed to make divisions of all waters of Ashley Creek where the same are taken from the natural channel thereof; and that under his direction there be constructed all dams, weirs and other necessary measurement devices for the proper and correct division of the waters of Ashley Creek.

4. That since the date of said Decree, several persons, not parties to the original action, have acquired, developed or claim the right to use some of the waters of Ashley Creek and its tributaries, which parties, have been, by order of this Court, made parties to this action by an order dated May 15, 1962.

5. That the various parties and water users have, by agreement, organized an Executive Committee wherein all parties are represented and authorized to conduct the joint business of the water users of Ashley Creek.

6. That the persons or corporations having a right to use the waters of Ashley Creek are entitled to vote at such meetings pertaining to the business of those owning water rights in Ashley Creek in proportion to the right of such person or corporation.

7. That on the 27th day of April, 1983, at a meeting called for all of the users of the waters of Ashley Creek or their representatives to which meeting all users were given notice and invited to attend, the Chairman of the said Committee was authorized, by unanimous vote of all those present, to file a petition on behalf of the persons

or corporations owning rights to the use of the waters of Ashley Creek requesting this Court to reappoint David Rasmussen as Water Commissioner for the period beginning April 7, 1983 and ending April 6, 1984, and that the said David Rasmussen, by reason of his qualification and experience as Commissioner of the water of Ashley Creek is competent and qualified to act as Water Commissioner.

NOW THEREFORE, IT IS HEREBY ADJUDGED AND DECREED:

1. That David Rasmussen be, and he hereby is appointed Commissioner of the waters of Ashley Creek and its tributaries, which Creek is a tributary of Green River in Uintah County, State of Utah, for a period of one year beginning April 7, 1983 and ending April 6, 1984, or until further order of this Court. He is hereby directed to administer and distribute the waters of Ashley Creek and its tributaries by himself or duly appointed deputies in accordance with the Decrees of this Court and the laws of the State of Utah, which, by reference are made a part hereof, to the parties hereto in accordance with their respective rights, as heretofore established by this Court.

2. That the Commissioner shall confer and counsel with the Chairman of the Executive Committee of the Ashley Creek Water Users, provided, however, said Chairman shall act in an advisory capacity only and that the Commissioner shall be responsible to this Court. That the Commissioner is hereby authorized and directed, when requested by persons or corporations having primary rights to use the water of Ashley Creek, and agreed to by such persons, that he may establish water turns among such persons when in his judgment it will increase the efficiency of water use.

3. That the Commissioner shall name and appoint such deputy or deputies as he may need in the distribution of the waters of Ashley Creek and he is hereby authorized to pay a reasonable salary or wage and automobile mileage to himself and such persons as he may employ in carrying out the provisions of this Order. He shall notify the respective water users of their proportionate share of the expense of carrying out the terms of this Order, such notice shall direct the various water users to pay such assessments at the office of the Commissioner, the amounts due, on or before July 1, 1983, and the money paid to the Commissioner shall be held by him in a trust fund account and disbursed for purposes of paying expenses involved in carrying out the provisions of this Order.

4. The expenses of carrying out the provisions of this Order, as estimated by the said commissioner at \$18,000.00, shall be paid by the parties hereto in the following proportions at the office of the commissioner at 61 East Main Street, Vernal, Utah 84078:

(A) Primary Water Users to pay 55% of \$18,000 = \$9,900.00
in the following proportions:

Ashley Upper Irrigation Company	.327%
Colton Ditch Company	.036%
Steinaker Ditch Company	.02%
Ashley Central Irrigation	.335%
Island Ditch Company	.074%
Dodds Ditch Company	.01%
Rock Point Company	.198%

(B) Ashley Valley Reservoir Company -20% = \$3,600.00

(C) Uintah Water Conservancy District - 15% = \$2,700.00

(D) All other Users to be paid in the following proportions: - 10% = \$1,800.00

Highline Canal Company	.25%
Dry Fork Irrigation Company	.10%

Gerald Clark	.05%
Mosby Irrigation Company	.25%
Pitt Ditch Company	.05%
Duayne T. Johnson	.05%
Morgan Merkley and George D. Merkley	.05%
Lester Hullinger	.05%
Henry T. Peltier, Jr.	.05%
Sadie McConkie Estate	.05%
Rex Gardner Estate	.05%

Provided, further that in the event the said Commissioner shall overestimate the actual expenses incurred during the above period, then the remaining balance shall be carried forward to cover expenses for the next irrigation season, and that in the event the said Commissioner shall under estimate the actual expenses incurred during the above period, then he shall report the same to this Court and a further assessment will be made to meet the expense incurred.

5. That said Commissioner shall distribute the water of said Ashley Creek at the weirs or points of diversion heretofore constructed by the respective parties and approved by this Court and where the said parties do not have proper weirs and measurement devices, it is hereby ordered that they shall install the same in a manner to be approved by the said Commissioner, which devices shall be mechanical and constructed in a manner that they will shut off the waters of the respective ditches and canals when directed by the Commissioner, and that each user shall, at his own expense, provide a way to and from his diversion to that the Commissioner shall have the most convenient and reasonable access to each diversion and measuring device.

6. That it is further ordered that each party hereto shall, at his or its own expense, install a Parshall Flume or other measuring device at the head of his or its ditch at a place and in a manner to be approved by the Commissioner.

7. That the respective parties hereto are hereby ordered to comply with the scheduled of turns and other rules and regulations as they may be given by the said Commissioner and approved by this Court in the use of the waters they are entitled to under the terms of this Decree and the laws of the State of Utah.

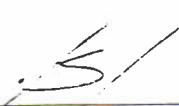
8. The Commissioner and his deputies are hereby ordered and directed that in the event any of the parties hereto fail to comply with this Order, to shut off the water of the said party and report the failure to this Court.

9. That the said Commissioner is hereby directed to file written report of his actions and activities in the distribution of the waters of Ashley Creek for the 1983-1984 irrigation season, which report shall be filed as soon after January, 1984 as may be practical.

10. It is further provided that in the event any of the parties hereto shall disagree with the Chairman of the said water users committee, then he is hereby authorized to confer directly with the Commissioner or his deputy concerning any distribution problem and in the event the Commissioner or his deputy cannot settle such controversy, such person may present his problem to the Court for Final Determination.

DATED this 17 day of May, 1983.

BY THE COURT:



Richard C. Davidson
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of May, 1983, I Mailed a true and correct copy of the foregoing Order Appointing Water Commissioner, 1983-1984, to the following persons:

Ashley Upper Irrigation Co.

80 North Vernal Avenue
Vernal, Utah 84078

Ashley Central Irrigation Co.

80 North Vernal Avenue
Vernal, Utah 84078

Island Ditch Co.

80 North Vernal Avenue
Vernal, Utah 84078

Rock Point Canal Co.

80 North Vernal Avenue
Vernal, Utah 84078

Uintah Water Conservancy Dist.

28 West 3325 North
Vernal, Utah 84078

Ashley Valley Reservoir Co.

80 North Vernal Avenue
Vernal, Utah 84078

Steinaker Ditch Co.

c/o Woody B. Searle
1575 West 2775 North
Vernal, Utah 84078

Hardy Ditch Co.

c/o Wallace R. Anderson
2474 West 1500 North
Vernal, Utah 84078

Highline Canal Co.

80 North Vernal Avenue
Vernal, Utah 84078

Pitt Ditch Co.

c/o Woody B. Searle
1575 West 2775 North
Vernal, Utah 84078

Gerald Clark

13000 North Dry Fork
Vernal, Utah 84078

Dry Fork Irrigation

11070 North Dry Fork Canyon
Vernal, Utah 84078

Mosby Irrigation Company

c/o Dorothy Peltier
401 County Building
Vernal, Utah - 84078

Henry T. Peltier

8080 North Dry Fork Canyon
Vernal, Utah 84078

Morgan Merkley, George D. Merkley

1389 North 2500 West
Vernal, Utah 84078

Duayne T. Johnson

3276 South 3690 West
West Valley City, Utah 84120

Lester Hullinger

8016 North Dry Fork Canyon
Vernal, Utah 84078

Sadie McConkie Estate

North Dry Fork Canyon
Vernal, Utah 84078

Dodds Ditch Co.

c/o Joseph Dodds
2412 North 1500 West
Vernal, Utah 84078

U.S. Water & Power Resources Service

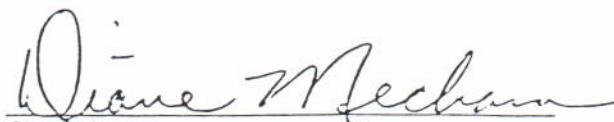
125 South State
Salt Lake City, Utah 84111

Colton Ditch

c/o James Drollinger
1900 North 3000 West
Vernal, Utah 84078

Rex Gardner Estate

7050 North Dry Fork Canyon
Vernal, Utah 84078


Secretary